

Patent
Attorney Docket No. GEMS8081.055

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Gupta et al.
Serial No : 09/747,647
Filed : December 22, 2000
For : Method and Apparatus for Reporting the Status
of Work in Progress
Group Art No. : 3627
Examiner : McClellan, J.

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APPEAL BRIEF PURSUANT TO 37 C.F.R. §§1.191 AND 1.192

Dear Sir:

This Appeal Brief is being filed in furtherance to the Notice of Appeal faxed to the Board of Patent Appeals on July 8, 2004.

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1. REAL PARTY IN INTEREST

The real party in interest is General Electric Company and GE Medical Systems Global Technology Company, LLC, the Assignee of the above-referenced application by virtue of the Assignment to GE Medical Systems Global Technology Company, LLC, recorded on April 12, 2001, recorded at reel 011718, frame 0568.

2. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any other appeals or interferences related to this Appeal. The undersigned is Appellant's legal representative in this Appeal. GE Medical Systems Global Technology Company, LLC, the Assignee of the above-referenced application, as evidenced by the documents mentioned above, will be directly affected by the Board's decision in the pending appeal.

3. STATUS OF THE CLAIMS

Claims 1-21 are currently pending, and claims 1-21 are currently under final rejection and, thus, are the subject of this appeal.

4. STATUS OF AMENDMENTS

The Appellant submitted in the May 10, 2004 Response, amendments to renumber claims 13-22 as required by the Examiner in the March 8, 2004 Final Office Action. As indicated on page 2 of the July 8, 2004 Advisory Action, Appellant's amendment will be entered at appeal.

5. SUMMARY OF THE INVENTION AND OF THE DISCLOSED EMBODIMENTS

The present invention provides a method and system for electronically reporting real-time status of work in progress. An alert system is disclosed that contains both proactive and reactive alerts. The alert scheme is based upon an electronic warning of mismatched future promised delivery dates and customer requested shipping dates. The alerts assist with avoiding or greatly reducing any problems with meeting customer expectations. See Application, pg. 3, ¶ 5.

In accordance with one aspect of the invention, a method for reporting status of work in progress is disclosed wherein a database 14 is periodically queried for information about product orders. The information obtained for each order includes: an

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order number, a promise date, a request date, a shipment date, and a product category for a plurality of products/services offered 98, 102. The method further provides comparing the promise dates and the request dates 114. Once compared, it is decided whether an alert should be set 116, 122, including setting a proactive promise alert if a promise date is later than a request date for a given order 116. The proactive promise alerts with the order number, product category, and type of alert are then displayed for case of action 126. See Application, pg. 5, ¶ 6.

In accordance with another aspect of the invention, a computer-readable medium is disclosed, having stored thereon one or more computer programs. The computer program(s), when executed by one or more computers, causes the one or more computers to display electronic shipment alerts 126. The program begins by instructing the one or more computers to populate a database with data to include an order number, a promise date, a request date, a shipment date, and a product category for a plurality of orders 20-28. The one or more computers are additionally instructed to periodically query the database 32 and compare promise dates to request dates 114. Once compared, the one or more computers are instructed to set a proactive alert if the promise date is later than a request date 114a, and set a reactive alert if the shipment date exists and the request date is less than a user-defined number of days prior to a current date 122. The computer then displays any promise and shipment alerts organized by product category and type of alert 126. See Application, pg. 3, ¶ 7 to pg. 4.

In accordance with yet another aspect of the invention, a computer data signal is disclosed, representing a sequence of instructions, that when executed by one of more processors, causes the one or more processors to display proactive and reactive alerts by product/service category and type of alert 126. The instructions first cause the one or more processors to populate a database with an order date indicating a date an order is initially made, a request date indicating a date when a customer requests delivery of the order, a shipment date when available indicating a date when actual shipment will occur, and a product/service category for each order for a product/service 98, 102. The one or more processors are further instructed to query the database and compare promise dates to request dates for each order 114, and to check for the entry of a shipment date for each

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order 118. The one or more processors are then instructed to set a proactive alert 116 if any promise date is later than a request date 114a, and to set a reactive alert if a shipment date exists for an order and the request date is less than a user-defined number of days prior to a current date 120. The one or more processes are lastly instructed to display all proactive and reactive alerts by product/service category and type of alert 126. See Application, pg. 4, ¶ 8.

6. **GROUND OF REJECTION**

Claims 1-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Martin et al. (USP 5,809,479) in view of Schoenberg et al. (USP 6,322,502).

7. **REJECTION UNDER 35 U.S.C. §103(a) OVER MARTIN ET AL. IN VIEW OF SCHOENBERG ET AL.:**

As discussed in detail below, the Examiner has improperly rejected the pending claims. The Examiner has misapplied long-standing and binding legal precedents and principles in rejecting the claims under §103(a) of Chapter 35 of the United States Code. The Examiner finally rejected claims 1-21 under 35 U.S.C. §103(a) as unpatentable over Martin et al. in view of Schoenberg et al. stating that:

Martin et al. discloses a method of reporting status of work in progress, comprising the steps of periodically querying a database that contains order data (see column 2, lines 30-38); comparing a promise data and a request data (see column 4, lines 54-65).

Martin fails to disclose setting and displaying alerts when processing of an order is after a predetermined time period.

Schoenberg et al. discloses a database monitoring function that allows a user to be alerted when an order is late (see column 5, lines 39-47).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Martin et al. with status monitoring as taught by Schoenberg et al., because status monitoring reminds the user that an order has not been completed and action needs to be taken to correct the delay.

The Examiner takes Official Notice that proactive and reactive alerting systems are well known in the art and a person of ordinary skill in the art would recognize that alerting systems can be programmed as with proactive or reactive as desired by the user.

March 8, 2004 Office Action pg. 2, ¶ 5 through pg. 3, ¶ 4.

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Appellant traversed the use of "Official Notice" and the Examiner acknowledged that the current rejection is not based on Official Notice in stating that "[a]ll limitations are supported by the combination of Martin in view of Schoenberg." March 8, 2004 Office Action, pg. 4, lns. 4-5 and 10-11. Accordingly, all previous "Official Notice" statements are not relevant and will not be addressed herein.

Contrary to the Examiner's assertion, Appellant respectfully disagrees that the art of record supports a 35 U.S.C. §103(a) rejection of the present claims. The burden of establishing a prima facie case of obviousness falls on the Examiner. MPEP §2142. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a prima facie case, the Examiner must not only show that the combination includes each and every element of the claimed invention, but also provide "a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). That is, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP §2143.01. "The fact that references can be combined or modified is not sufficient to establish prima facie obviousness." Id. (emphasis added). When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the

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reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. Appellant believes that a *prima facie* case of obviousness cannot be made based on the art of record because, as will be shown below, (I) the references are directed to very different purposes and therefore, there is no motivation to combine these references in a way done so by the Examiner, other than Appellant's own teaching; (II) the combination would not have a reasonable expectation of success because the combination would not result in the same, or even a similar system, as that presently claimed; and (III) all the elements of the present claims are not present in the references. The Examiner, as will be shown below, has failed to establish each of the three separate and distinct criteria necessary to support a §103(a) rejection.

CLAIM 1:

Claim 1 calls for, in part, setting a proactive promise alert if a promise date is later than a request date for a given order and displaying the proactive promise alerts with an order number. That is, the proactive alert is displayed if a delivery delay will result if operation is allowed to continue without modification. Simply, when the proactive alert occurs, there is yet to be a delay. That is why the alert is "proactive". If an alert is displayed to correct an existing delay, the delay has already occurred and therefore, the alert is "reactive" thereto. The Examiner maintains that:

Schoenberg teaches proactive monitoring or "reminders," as well as, tracking orders reactively (see column 5, lines 39-48). The motivation to combine comes directly from Schoenberg wherein both reactive and proactive alerts are taught. Proactive alerts provide the user with a reminder that action needs to be taken in order to correct the delay."

May 3, 2004 Office Action ; pg. 4, ¶ 2 (emphasis added).

(I) Lack of motivation to combine references:

Schoenberg et al. discloses a medical information system that receives patient data and information from various sources and displays such information in a variety of formats for use by members of a medical team. See Schoenberg et al. Abstract. Schoenberg et al. discloses generating operational reminders for each action item that is transmitted between different members of a patient's medical treatment team. See

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Schoenberg et al. col. 5, lns. 40-42. Schoenberg et al. further discloses that the system permits the entry of confirmatory information by respective members of a patient's medical treatment team and further, that if a treatment, i.e. medication, is not delivered as prescribed by the patient's doctor, an alarm is indicated to notify the medical team that an order, i.e. medicating of a patient, has not yet been carried out. See Schoenberg et al. col. 5, lns. 43-48.

The system of Schoenberg et al. provides for intercommunication between a plurality of individual health care personnel who may be associated with a specific patient. See Schoenberg et al. col. 6, lns. 13-37. As a patient's primary physician determines a medication regiment for the patient, the patient's proscribed medication regiment is input into the system and communicated to the pharmacist who distributes the medications, and the resident assistants or nurses who administer the proscribed medications to the patient. Id.

Unrelated to Schoenberg et al., Martin et al. discloses a system of tracking and reporting on-time delivery performance of goods. See Martin et al., Title. Martin et al. acquires a delivery window for individual customers. See Martin et al., Abstract. The delivery window determines when the customer considers goods to be delivered on time. Id. For each subsequent order, the customer provides a customer-requested delivery date. Id. A customer-preferred ship date is then determined by comparing the customer-requested delivery date and the delivery window characteristics. Id. The system then shows to an order scheduler -- a person -- the customer-preferred ship date and obtains a targeted ship date for the order from the order scheduler. Id. The order scheduler then dictates what the actual ship date will be and in so doing, knows whether a specific order will be delivered after a customer-requested ship date. Id. The system maintains delivery statistics for each customer and determines on-time delivery statistics for each customer. Id. That is, if an order is going to be shipped to a customer after a customer-requested ship date, the human order scheduler is abundantly aware of a late shipment date as it is that very order scheduler that dictates which orders will be delivered late. Since the system of Martin et al. is directed to tracking and reporting on-time delivery statistics,

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Martin et al. acknowledges that some deliveries will be delivered after a customer-requested ship date and will therefore be delivered late.

Since Martin et al. is interested in after completion report generating, there would be no motivation to combine the system of Martin et al. with any alerting function that may be disclosed in Schoenberg et al. That is, because the scheduler referred to in Martin et al. already knows that an order will be delivered after a customer-requested delivery date, it would be fruitless to alert the very scheduler that the date that they just knowingly entered is after the customer-requested delivery date. Such would be contrary to the teaching of the reference. As supported above, the art of record does not teach, disclose, or even remotely suggest a motivation for reporting status of work in progress, including setting a proactive promise alert if a promise date is later than a request date for a given order and displaying the proactive promise alerts with the order numbers as called for in claim 1.

In order to support a rejection under 35 U.S.C. §103(a), the references must include a motivation to combine the references. MPEP §2142. However, in this case, not only is there no motivation to combine the references within the references themselves, commonsense dictates that there is no motivation to combine them at all since they are directed to very different purposes. Because, as will be described in further detail, the only logical combination of these references merely results in a preset mechanical reminder for the human scheduler to review each order before it becomes due -- which he already does in Martin et al., there is no reason, and thus no motivation, to combine these references.

The general nature of the system of Martin et al. is not directed to any alert function, either reactive or proactive -- as such is not even disclosed in Martin et al. Martin et al. teaches a system whereby a human scheduler, based on manufacturing capacity or other parameters, changes a delivery date to a date beyond the customer request date. See Martin et al. col. 3, ln. 59 to col. 4, ln. 1. This is accomplished by a manual review of all the orders. Martin et al. col. 3, lns. 59-61. As the delivery date of Martin et al. is controlled by the human scheduler's input upon the manual review of all the orders, there is no motivation in either reference or combination thereof to include

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any alert based upon shipment date and request date comparisons. It is clear that Martin et al. requires a human scheduler to review orders and dictate the date of delivery, thereby making the customer subject to deviations from a requested delivery date. Id. As such, within the context of Martin et al., there is no motivation to provide any alert -- reactive or proactive. Martin et al. teaches that the scheduler reviews all the orders and manipulates the delivery date -- therefore he already knows that a specific delivery will be late. Martin et al. col. 3, lns. 61-66. As such, there is no motivation to provide an alert for that which is already known. Therefore, as shown above, the art of record does not include the motivation to combine the references in the manner done by the Examiner.

(II) Lack of reasonable expectation of success:

The second independent element required to support a 35 U.S.C. §103(a) rejection is that there must be a reasonable expectation of success in combining the references. MPEP §2142. There is no such reasonable expectation of success in the present case. Claim 1 calls for, in part, setting a proactive promise alert if a promise date is later than a request date for a given order. First, the system of Schoenberg et al. does not include any request dates. Appellant is unaware of any medicinal distribution system wherein the patient -- i.e. the customer of Schoenberg et al. -- requests a time of medication. Because the doctor dictates when the patient will be medicated, "request dates" are wholly absent in this reference. See Schoenberg et al. col. 5, lns. 38-48. Second, if an alert is generated for every order of Martin et al., as suggested by the preset mechanical reminders of Schoenberg et al., then after the scheduler of Martin et al. reviews the orders, and he moves an order so that the promise date is later than a request date, the system would then immediately generate an alert, according to Schoenberg et al., to alert the very scheduler who moved the data just seconds before. Since the scheduler already knows that the delivery date is after the customer-requested delivery date -- the scheduler does not need an alert and, in fact, it would hinder his performance by requiring that he now must clear an alert of the condition he just created. See Martin et al. col. 3, ln. 61 to col. 4, ln. 1. What purpose would that serve?

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Martin et al. teaches altering the delivery date beyond the customer-requested delivery date in response to production shortcomings. See Martin et al. col. 4, lns. 41-43. That is, the customer is still subject to the supplier dictating when delivery will take place rather than alerting the supplier that a late delivery will occur and allowing alteration of the production schedule to prevent such occurrences. Simply, Martin et al. tracks delivery problems rather than resolving the delivery problems prior to affecting the customer. Id. The present invention, by providing proactive alerts when a promise date is later than a request date, allows a supplier to adapt to production shortcomings to prevent late deliveries rather than making the customer subject to such limitations, or at the very least, allows early warning to notify the customer rather than simply statistically calculating late deliveries, as is the case in Martin et al. Id. A reasonable combination of these references does not result in the claimed invention, nor would it achieve the advantages -- or successes of the present invention. The only reasonable combination of the references results in the human order scheduler of Martin et al. clearing a reminder for every order that he himself elects to deliver late. As the human order scheduler of Martin et al. acknowledges that late orders are acceptable -- by setting a ship date after a request date -- providing any reminder that an order will be late merely reminds the human order scheduler of that which they already know. Accordingly, there is a complete lack of a reasonable expectation of success for such a combination.

(III) Lack of references teaching, showing, or disclosing all the elements of the present claims:

Schoenberg et al. states that "[c]ompliance with orders is tracked as well, and the display screen can indicate an alarm or other warning indicator which notifies the medical team that an order has not yet been carried out." Schoenberg et al. col. 5, lns. 45-48 (emphasis added). As the Examiner states, Schoenberg et al. discloses an alert that is provided when an order is already late, or has not yet been carried out, but in any case, it is already late -- it has not been delivered on time. See Id. Granted, Schoenberg et al. does provide reminders before the action is required, but it only does so with a preset period of time. For example, if a doctor prescribes a certain patient be provided with a specific medication, a reminder is sent for each respective patient reminding the balance

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of the medical team that the prescription is expected to be administered. Schoenberg et al. col. 5, lns. 41-42.

Claim 1, however, calls for a proactive alert if "a promise date" is later than "a request date" for a given order. Appellant is unaware of any medication that is promised in response to a patient's requested date of delivery. That is, the medication is to be delivered according to a doctor's predetermined administering procedure or date. The patient is medicated according to the doctor's advice, not the patients' request, and an alert is generated if the medication has not been administered in accordance therewith. This alert is reactive to a late order and therefore is not proactive to prevent such occurrences. Further, there is absolutely no comparison of a promised date to a request date -- none. Schoenberg et al. discloses no request date whatsoever, for if it did, it would be a "request" by its customer -- the patient -- and that makes no sense in the context of Schoenberg et al.

The step of setting a proactive promise alert if a promise date is later than a request dates for a given order, as called for in claim 1, is therefore completely absent from both references. One reference, Schoenberg et al., has no request date for a given order, and the other reference, Martin et al., sets no alerts whatsoever. Further then, neither reference teaches, suggests, or even hints at "displaying the proactive promise alerts with the order numbers." These elements are wholly absent in both references.

Additionally, as stated in the present Specification: "[t]he word 'proactive' is meant to show that an alert may be set while there is still time to rectify a possible problem in the process, in this case, shipping." Specification, pg. 16, ¶ 38, lns. 3-5. "The proactive alert allows the process owners to make adjustments or take special action in order to avoid a late shipment." Specification, pg. 16, ¶ 38, lns. 5-6. The Schoenberg et al. alert is not proactive in that the alert is not generated to anticipate a problem, but is generated to notify that a problem already exists, i.e., the order is already late. Clearly, such an alert is reactive to an error condition and is not proactive to prevent such errors. Simply, Schoenberg et al. discloses providing alerts after missing the required action. This may make sense for Schoenberg et al. since the time for corrective action is minimal -- i.e. medication can then be quickly given to the patient. However, such reactive alerts

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are not always practicable, especially in a manufacturing facility. That was a major consideration in why the present invention was developed -- to overcome these shortcomings by allowing correction of a potential defect in the process that would result in a delay if not corrected -- setting and displaying of proactive alerts based on a specific set of criteria, as claimed.

Martin et al., being directed to on-time delivery performance, teaches that late deliveries are addressed with deliveries after the requested delivery date and reports late deliveries for later corrective action based on statistical evaluation. That is, when the scheduler inputs a delivery date that is after a customer-requested delivery date, the scheduler acknowledges, or dictates, that a delivery will be late. Martin et al. col. 4, lns. 33-44. Martin et al. states that "database maintenance is typically performed by customer service representatives of the supplier, from within the suppliers order processing computer system." Martin et al. col. 2, lns. 43-47. Martin et al. further states that "...the computer system is programmed to show the order scheduler the calculated customer-preferred ship date and to obtain from the scheduler a targeted ship date for the customer order entry." Martin et al. col. 3, lns. 63-67 (emphasis added). That is, the system of Martin et al. is reactive to scheduler inputs, not proactive to rectify delivery problems as is specifically called for in claim 1.

The system of Martin et al. "...is programmed in a step 30 to generate on-time product delivery statistics for individual customers." Martin et al. col. 4, lns. 54-57. That is, the system does not report the status of work in progress but reports the status of completed work. As shown in the chart in Column five (5) of Martin et al., the system generates an on-time shipping report. Martin et al. col. 5, lns. 5-26. That is, the work is already completed and is either late or on time. Such a system is therefore wholly reactive to delivery difficulties rather than proactive to overcome processing considerations to directly improve delivery performance -- in real time. See Martin et al., claim 5. Martin et al. states that "The system and program described above allow a supplier to easily measure its performance using the same evaluation criteria used by its customers." Martin et al. col. 5, lns. 47-49 (emphasis added). In other words, the work needs to be completed in order to measure the performance. As such, the system of

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Martin et al. does not teach, or even suggest, monitoring the status of work in progress as the customer is only interested in delivery -- or work that is already completed.

For all the reasons set forth above, Appellant believes that the art of record fails to establish each requirement, as required under MPEP §2142, of substantiating a 35 U.S.C. §103(a) rejection of claim 1. As the art of record lacks the motivation to combine the references in the manner done by the Examiner, lacks a reasonable likelihood of success, and fails to teach or suggest each and every element of claim 1, Appellant believes claim 1, and those claims that depend therefrom, are patentably distinct over the art of record. Appellant believes claims 2-6 and 8 are in condition for allowance at least pursuant to the chain of dependency. However, since Appellant believes claim 7 includes subject matter that is additionally distinguishable from the art of record, Appellant will specifically address that which is patentably distinct above and beyond the allowability of the claim pursuant to the chain of dependency.

CLAIM 7:

Claim 7 further defines claim 1 wherein the proactive promise alert allows for correction of a potential late shipment and a reactive shipment alert provides data to prevent future late shipments. As argued above with respect to claim 1, the customers of a supplier operating under the system of Martin et al. are subject to orders being delivered late as dictated by a human order scheduler. See Martin et al. col.4, lns. 34-45. There is no disclosure in either Martin et al. or Schoenberg et al. for a proactive alert to allow for the correction of a potential late shipment as called for in claim 7. That is, rather than merely recording and maintaining data of late deliveries, as taught by Martin et al., the system of the present invention prevents, or significantly reduces, such occurrences by providing proactive alerts to allow for the correction of potential late shipments prior to a missed delivery date. See Specification pg. 16, ¶38, lns. 5-8. The present invention is clearly an improvement over the system of Martin et al. wherein the customers delivery date is subject to a delivery date dictated by a supplier scheduler. See Martin et al. col. 4, lns. 34-44. As such, claim 7 contains subject matter that is patentable, independent from that of claim 1.

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CLAIM 9:

Claim 9 calls for, in part, a computer-readable medium having stored thereon one or more computer programs that, when executed by the one or more computers, causes the one or more computers to: populate a database, set a proactive alert if a promise date is later than a request date, set a reactive alert if a shipment date exists and the request date is less than a user-defined number of days prior to a current date, and display any promise and shipment alert by product category and type of alert.

Again, the burden of establishing a *prima facie* case of obviousness falls on the Examiner. MPEP §2142. To establish a *prima facie* case, the Examiner must show (I) there is a suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or combine the reference teachings, (II) a reasonable expectation of success, and (III) the references must teach or suggest all the claim limitations. MPEP §2142. Again, Appellant does not believe that the Examiner has met each or any of the criteria required to establish a *prima facie* case of obviousness as required under MPEP §2142.

(I) Lack of motivation to combine references:

Again, in order to support a 35 U.S.C. §103(a) rejection, the references must contain the requisite motivation to combine the references. MPEP §2142. Notwithstanding the reference's failure to teach or suggest each and every element of claim 9 as will be discussed further below, the art of record fails to provide a motivation to combine the references. Additionally, as stated in MPEP §2143.01, "the level of skill in the art cannot be relied upon to provide the suggestion to combine references." MPEP §2143.01. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999). As previously argued with respect to claim 1, as Martin et al. allows a scheduler to set a delivery date later than a request date, there is no motivation for the system of Martin et al. to provide any alerts. The scheduler, by setting a delivery date after a request date, already knows that the delivery will not meet the customer's request date. Additionally, as Martin et al. is directed to teaching and supporting on-time delivery performance, there is no motivation for any alerting function, let alone (1) a proactive alert if a promise date is later than a request date and (2) a reactive alert if the shipment

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date exists and the request date is less than a user-defined number of days prior to the current date as specifically called for in claim 9. Furthermore, the lack of the relatedness in the on-time delivery, tracking and reporting system of Martin et al. and the medical information system of Schoenberg et al. further supports the lack of motivation of one skilled in the art to combine the references in the manner suggested by the Examiner.

As such, not only does the art of record fail to teach or suggest each and every element of claim 9 as will be discussed further below, but the art of record also fails to suggest a motivation to combine the references as the Examiner has done.

(II) Lack of reasonable expectation of success:

As previously argued with respect to claim 1, a reasonable combination of Schoenberg et al. and Martin et al. would result in nothing more than the scheduler, a person, receiving a reminder to look at each and every entry and reschedule the delivery date if the promised delivery date cannot be met. This would add nothing of substance to Martin et al. Such a redundant, manual rescheduling system is not what is presently claimed. The present invention, as defined in claim 9, calls for an automated system that sets and displays both (1) proactive alerts if a promise date is later than a request date and (2) reactive alerts if a shipment date exists and the request date is less than a user-defined number of days prior to a current date. As previously argued with respect to claim 1, any combination of Schoenberg et al. and Martin et al. does not yield the advantages or success of the present invention. Simply, the combination results in the human order scheduler of Martin et al. being "reminded" that the order scheduler has just dictated a delivery date that is later than a request date. This "reminder" serves no purpose as the order scheduler is the one who moved the date of delivery to a date after a request date.

(III) Lack of references teaching, showing, or disclosing all the elements of the present claims:

As argued with respect to claim 1, the art of record fails to teach or suggest proactive alerting. Schoenberg et al. states that:

The system provides for the entry and monitoring of action items, such as, for example, orders for drugs or other treatments. Operational reminders are then generated and transmitted to the medical team. The system further permits entry of confirmatory information by the appropriate member of the team to verify that an order has been carried

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out. Compliance with orders is tracked as well, and the display screen can indicate an alarm or other warning indicator which notifies the medical team that an order has not yet been carried out.

Schoenberg et al., Col. 5, lns. 38-48.

The Examiner states that "Schoenberg et al. teaches proactive monitoring or 'reminders,' as well as tracking orders reactively (see col. 5, lns. 39-48)" and that "the motivation to combine comes directly from Schoenberg, wherein both reactive and proactive alerts are taught." March 8, 2004 Office Action pg. 4, lns. 18-21. The Examiner further states that "proactive alerts provide the user with a reminder that action needs to be taken in order to correct the delay." Id., lns. 21-22. Appellant respectfully disagrees.

As argued above with respect to claim 1 and defined in the present Specification: "[t]he word 'proactive' is meant to show that an alert may be set while there is still time to rectify a possible problem in the process, in this case, shipping." Specification, pg. 16, ¶ 38, lns. 3-5. "The proactive alert allows the process owners to make adjustments or take special action in order to avoid a late shipment." Specification, pg. 16, ¶ 38, lns. 5-6. Simply, a reminder is not an alert, and claim 9 further calls for how/when the alert is set. As previously argued with respect to claim 1, if the prescribing doctor of Schoenberg et al. sets the "promise date", there is no "request date" at all in Schoenberg et al..

The Examiner's statement that "proactive alerts provide the user with a reminder that action needs to be taken in order to correct the delay" is inconsistent with that taught by Schoenberg et al.. See March 8, 2004 Office Action, pg. 4, lns. 21-22. Unlike a proactive alert, a reminder, as disclosed in Schoenberg et al., is generated for all action items and does not indicate a future failure if unaddressed. See Schoenberg et al. col. 5, lns. 38-42. That is, the reminder is nothing more than a schedule of intended actions and does not indicate a problem will occur due to the scheduling of the action items. Schoenberg et al. discloses indicating an alarm only in the event that an order has not been carried out prior to a prescribed medication period. Schoenberg et al. col. 5, lns. 45-48. As such, the alarm of Schoenberg et al. is reactive to incomplete action items. Schoenberg et al. discloses reactive alerts in response to action items that have failed to be carried out on an individual basis. Id. There is no disclosure in Schoenberg et al. or

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Martin et al. for setting a proactive alert if a promise date is later than a request date and displaying any alerts by product category and type of alert, as called for in claim 9.

Claim 9 is further defined as a computer readable medium having stored thereon one or more computer programs that, when executed by one or more computers, causes the one or more computers to periodically query a database, set a proactive alert if the promise date is later than a request date, set a reactive alert if the shipment date exists and the request date is less than a user-defined number of days prior to a current date, and display any promise and shipment alerts by product category and type of alert. That is, it is the system of the present invention that queries, sets, and displays any alerts that may be generated responsive to data queried from the database. As previously argued with respect to claim 1, it is not the system of Martin et al. that performs any of the claimed functions but the scheduler -- a person -- interacting therewith. While Applicant does not necessarily disagree that the system of Martin et al. performs various calculations, the system disclosed does not populate a database, periodically query the database, or set and display any alerts. All of which are called for in claim 9.

Claim 9 further calls for displaying any promise and shipment alerts by product category and type of alert. As previously argued with respect to claim 1, Martin et al. does not disclose any alerts. Furthermore, Schoenberg et al. only discloses reactive alerts generated in response to a missed action item. Schoenberg et al. col. 5, lns. 45-49. As such, a combination of the references would render only one type of alert -- a reactive alert. As such the references do not teach, suggest, or disclose displaying the type of alert since only one "type" of alert is generated in Schoenberg et al. There would be no reason to display the type of alert as called for in claim 9 as the combination of references only generates only one "type" of alert. As such, the art of record does not teach or suggest each and every element of claim 9 as required under MPEP §2142.

For all the reasons set forth above, Appellant believes that the art of record fails to establish each requirement, as required under MPEP §2142, of substantiating a 35 U.S.C. §103(a) rejection of claim 9. As the art of record lacks the motivation to combine the references in the manner done by the Examiner, lacks a reasonable likelihood of success, and fails to teach or suggest each and every element of claim 9, Appellant believes claim

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9, and those claims that depend therefrom, are patentably distinct over the art of record. Accordingly, Appellant requests favorable action over the rejection of claims 9-14 over Martin et al. in view of Schoenberg et al..

CLAIM 15:

Claim 15 calls for, in part, a computer data signal representing a sequence of instructions that, when executed by one or more processors, causes the one or more processors to query a database and compare promise dates to request dates for each order and check for the entry of a shipment date for each order and set a proactive alert if any promise date is later than a request date.

(I) Lack of motivation to combine references:

As argued above with respect to claims 1 and 9, there is no disclosure in either Martin et al. or Schoenberg et al. for a system that sets a proactive alert if any promise date is later than a request date. Appellant does not necessarily disagree that Schoenberg et al. discloses providing reminders; however, as argued above with respect to claim 1, Schoenberg et al. teaches generating preset reminders for each and every action item and only generating a reactive alert if an action has not been completed. Schoenberg et al. col. 5, lns. 44-48.

Claim 15 defines the proactive alert as being generated if a promise date is later than a request date. That is, the proactive alert is not a reminder that is generated for every action but is an alert that is indicative of a pending action failure if unaddressed. As defined in the present Specification, the proactive alert is intended "to show that an alert may be set while there is still time to rectify a possible problem in the process, in this case, shipping." Specification, pg. 16, ¶ 38, lns. 3-5. A reminder is not an alert in that there has not been a determination that if any promise date is later than a request date as called for in claim 15. The "reminder" of Schoenberg et al. is generated for each action item and is therefore not determined from any date comparison as called for in claim 15. See Schoenberg et al. col. 5, lns. 41-42. Additionally, as previously argued with respect to claim 1, there is no motivation, or support for the conclusion, that the system of Martin et al. include any alert. Any late delivery of Martin et al. is dictated by a human order

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scheduler that creates such a situation -- so he would not benefit from such an alert.
Martin et al. col. 4, lns. 34-44.

Claim 15 further calls for the one or more processors to set a reactive alert if a shipment date exists for an order and the request date is less than a user-defined number of days prior to a current date. As argued above with respect to claim 9, because the "system" of Martin et al. is directed to on-time delivery tracking and reporting, and because Martin et al. discloses that a human scheduler can dictate a delivery date beyond a request date -- as stated in Martin et al. column 4, lines 33-44 -- there is no motivation to provide an alert that an order will be delivered beyond the request date when the scheduler must input such information and, therefore, is already aware that a late delivery will occur.

Claim 15 further defines that the one or more processors display all proactive and reactive alerts by product/service category and type of alert. As previously argued with respect to claim 9, as Martin et al. does not disclose generating any alerts and Schoenberg et al. only discloses generating reactive alerts to medications that are not timely administered, there is no motivation in the art of record for displaying the type of alert. Only one alert -- a reactive alert -- is disclosed in Schoenberg et al. and no alerts are disclosed or useful in Martin et al. Claim 15 calls for setting proactive and reactive alerts and displaying all alerts as well as the type of alert. As Schoenberg et al. discloses generating one type of alert, a reactive alert, there is no motivation to display that any alert generated is a reactive alert as that is the only type of alert the system of Schoenberg et al. is capable of generating. Such an interpretation creates a redundancy in that only a reactive alert is generated by the applied art. That is, since the art discloses only one type of alert, the art not only does not display the type of alert, as called for in claim 15, but lacks any motivation for such a display. As such, not only does the art fail to teach or suggest both proactive and reactive alerts, but the applied art also fails to teach or suggest displaying the type of alert as only one type of alert can be generated by the systems disclosed therein.

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(II) Lack of reasonable expectation of success:

Claim 15 calls for, in part, a sequence of instructions that cause one or more processors to: set a proactive alert if any promise date is later than a request date, set a reactive alert if a shipment date exists for an order and the request date is less than a user-defined number of days prior to the current date, and displaying all proactive and reactive alerts by product/service category and type of alert.

As previously argued with respect to the lack of reasonable expectation of success with respect to claims 1 and 9, the art of record fails to achieve that which is called for in claim 15. The "reminders" of Schoenberg et al. are not generated by any date comparison. Schoenberg et al. merely discloses generating reminders for each action item. Schoenberg et al. col. 5, lns. 41-42. As these reminders are generated after the entry of action items, any date associated therewith would be a delivery date. As such, there is no setting of a proactive alert if a promise date is later than a request date as called for in claim 15. The combination suggested by the Examiner would merely require the order scheduler of Martin et al. to repeatedly clear reminders that do not indicate that a promise date is later than a request date but are merely mechanically created for each action item and do not indicate anything other than that an order has been placed. Such a system would clearly not achieve the benefits and success of the present invention.

(III) Lack of references teaching, showing, or disclosing all the elements of the present claims:

As previously argued with respect to claims 1 and 9, claim 15 calls for, in part, a computer data signal representing a sequence of instructions that cause one or more processors to set a proactive alert if any promise date is later than a request date, set a reactive alert if a shipment date exists for an order and the request date is less than a user-defined number of days prior to the current date, and displaying all proactive and reactive alerts by product/service category and type of alert. As extensively argued and supported above, the art of record does not teach, disclose, or suggest setting a proactive alert if any promise date is later than a request date, as also called for in claim 15.

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Appellant does not disagree that Schoenberg et al. discloses generating reactive alerts for action items that are not completed by a delivery date. Schoenberg et al. col. 5, lns. 45-48. That is not what is called for in claim 15. Claim 15 calls for setting a reactive alert if a shipment date exists for an order and the request date is less than a user-defined number of days prior to a current date. The alert of Schoenberg et al. is generated only after the action item has not been completed by the delivery date. Additionally, the system of Martin et al. discloses that a human order scheduler dictate a delivery date later than a request date. Martin et al. col. 3, lns. 61-66. As such, setting a reactive alert by a computer data signal if a shipment date exists for an order and the request date is less than a user-defined number of days prior to the current date, as called for in claim 15, is also not taught, shown, or even suggested in the art of record.

Claim 15 further calls for the display of all proactive and reactive alerts by product/service category and type of alert. As previously argued with respect to claim 9, there is no support in the art of record for the display of the "type" of alerts. Schoenberg et al. only discloses one type of alert and Martin et al. does not disclose any alerts. As such, the art of record fails to teach, suggest, or disclose displaying the type of alert since only one type of alert is generated by the combination of these references -- a reactive alert.

Minimally, three distinct elements of claim 15 are not taught, shown, or disclosed in the art of record. In addition thereto, as argued above, the references lack the motivation to combine the references in the manner done by the Examiner and lack a reasonable likelihood of success by any combination thereof. For all the reasons set forth above, Appellant believes that the art of record fails to establish each and every requirement, as required under MPEP §2142, of substantiating a 35 U.S.C. §103(a) rejection of claim 15. As the applied art lacks the motivation to combine the references in the manner done by the Examiner, lacks a reasonable likelihood of success, and fails to teach or suggest each and every element of claim 15, Appellant believes claim 15, and those claims that depend therefrom, are patentably distinct over the art of record. Accordingly, Appellant requests favorable action over the rejection of claim 15 over Martin et al. in view of Schoenberg et al.

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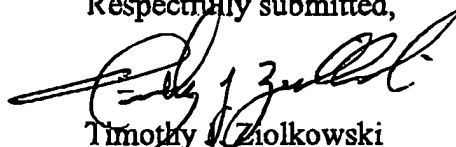
8. CONCLUSION

In view of the above remarks, Appellant respectfully submits that the Examiner has provided no supportable position or evidence that claims 1-21 are obvious under 35 U.S.C. §103(a). Accordingly, Appellant respectfully requests that the Board find claims 1-21 patentable over the prior art of record, direct withdrawal of all outstanding rejections, and direct the present application be passed to issuance.

General Authorization for Extension of Time

In accordance with 37 C.F.R. §1.136, Appellant hereby provides a general authorization to treat this and any future reply requiring an extension of time as incorporating a request therefore. Prior authorization has been given authorizing charging Deposit Account No. 07-0845 fees associated with the above-captioned matter. Accordingly, Appellant requests that the \$340.00 fee for filing this Appeal Brief Under 37 C.F.R. §1.17(c) and the \$110.00 one-month extension fee be charged against Deposit Account No. 07-0845.

Respectfully submitted,



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APPENDIX OF CLAIMS ON APPEAL

1. (Previously Presented) A method for reporting status of work in progress, comprising the steps of:

periodically querying a database that contains data indicating an order number, a promise date, a request date, a shipment date, and a product category for a plurality of products/services offered;

comparing the promise dates and the request dates;

setting a proactive promise alert if a promise date is later than a request date for a given order; and

displaying the proactive promise alerts with the order numbers.

2. (Original) The method of claim 1 further comprising the steps of:

setting a reactive shipment alert if the shipment date exists and the request date is less than a user-defined number of days prior to a current date; and

displaying any reactive shipment alerts with the order number together with the proactive promise alerts.

3. (Original) The method of claim 2 wherein the user-defined number of days is equivalent to a number of days required for shipping a product to a customer.

4. (Previously Presented) The method of claim 1 wherein the querying of the database is conducted automatically at regular time intervals, and wherein the step of displaying is further defined as displaying the proactive promise alerts with the order numbers by product category and type of alert.

5. (Original) The method of claim 1 wherein the steps of the method are repeated automatically in real time.

6. (Original) The method of claim 1 further comprising repeating the steps of the method every time a request for information is made.

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7. (Original) The method of claim 2 wherein the proactive promise alert allows for correction of a potential late shipment and the reactive shipment alert provides data to prevent future late shipments.

8. (Original) The method of claim 1 further comprising the steps of reacting to a proactive alert by performing one of:

modifying the promise date to coincide with the request date; and
notifying a customer that the request date cannot be fulfilled as desired.

9. (Original) A computer-readable medium having stored thereon one or more computer programs that, when executed by one or more computers, causes the one or more computers to:

populate a database with data to include an order number, a promise date, a request date, a shipment date, and a product category for a plurality of orders;

periodically query the database and compare promise dates to request dates;

set a proactive alert if the promise date is later than a request date;

set a reactive alert if the shipment date exists and the request date is less than a user-defined number of days prior to a current date; and

display any promise and shipment alerts by product category and type of alert.

10. (Original) The computer-readable medium of claim 9 wherein the user-defined number of days is equivalent to a number of days required for shipping a product to a customer or providing a service to a customer.

11. (Original) The computer-readable medium of claim 9 wherein the query of the database is conducted automatically at regular time intervals.

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12. (Original) The computer-readable medium of claim 9 wherein the one or more computer programs cause the one or more computers to repeat the actions of claim 9 every time a request for information is made.

13. (Original) The computer-readable medium of claim 11 wherein the regular time interval is between 0 and 60 seconds.

14. (Original) The computer-readable medium of claim 11 wherein the regular time interval is greater than 1 minute.

15. (Original) A computer data signal representing a sequence of instructions that, when executed by one or more processors, cause the one or more processors to:

populate a database with an order date indicating a date an order is initially made, a request date indicating a date when a customer requests delivery of the order, a shipment date, when available, indicating a date when actual shipment will occur and a product/service category for each order for a product/service;

query the database and compare promise dates to request dates for each order and check for the entry of a shipment date for each order;

set a proactive alert if any promise date is later than a request date;

set a reactive alert if a shipment date exists for an order and the request date is less than a user-defined number of days prior to a current date; and

display all proactive and reactive alerts by product/service category and type of alert.

16. (Original) The computer data signal of claim 15 wherein the user-defined number of days is equivalent to a number of days required for shipping a product/service to a customer.

17. (Original) The computer data signal of claim 15 wherein the query of the database is conducted automatically at regular time intervals.

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18. (Original) The computer data signal of claim 15 wherein the computer data signal causes the one or more processors to repeat the actions of claim 15 every time a request for information is made.

19. (Original) The computer data signal of claim 17 wherein the regular time interval is between 0 and 60 seconds.

20. (Original) The computer data signal of claim 17 wherein the regular time interval is greater than 1 minute.

21. (Original) The computer data signal of claim 15 wherein the computer data signal causes the one or more processors to allow user modification of the promise date to coincide with the request date in response to the proactive alert if the product/service is available by the request date.